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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,660	05/05/2005	Youichi Arai	271812US0PCT	1371
22850 7590 01/02/2008 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER PAGONAKIS, ANNA	
			ART UNIT 4173	PAPER NUMBER
			NOTIFICATION DATE 01/02/2008	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/533,660

Applicant(s)

ARAI ET AL.

Examiner

Anna Pagonakis

Art Unit

4173

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 3-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-2; 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>5 sheets</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's election with traverse of Group I, claims 1 and 2, and specie chlorogenic acid in the reply filed on 11/30/2007 is acknowledged. The traversal is on the grounds that lack of unity was not found in the related application. This is not found persuasive because the standard for finding lack of unity is proper when there is no technical relationship among the inventions that involves at least one common or corresponding special technical feature. The expression special technical feature is defined as meaning those technical features that define the contribution which each claimed invention, considered as a whole, makes over the prior art. Applicant argues that the technical feature taken as a whole is a special technical feature. This is not found persuasive. Since the species chlorogenic, caffeic and ferulic acid does not contribute over the prior art, there is no common special technical feature amongst the claims.

Furthermore, the traversal is on the grounds that searching all claims does not impose an undue burden. This is not found persuasive because the inventions above are patentably distinct. The search for each of the above inventions and species is not co-extensive particularly with regard to the literature search. Burden consists not only of searching multiple databases for foreign references and literature searches. Burden also resides in the examination of independent claim sets for clarity, enablement and double patenting issues. Further, a reference that would anticipate the invention of ones group would not necessarily anticipate or even make obvious another group. Finally, the consideration for patentability is different in each case. Thus, it would be an undue burden to examine all of the above inventions in one application.

Art Unit: 4173

Claims 3-24 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. The requirement is still deemed proper and is therefore made FINAL.

Accordingly, claim 25 has been added, and no claims have been cancelled or amended.

Claims 1-2 and 25 are presently under examination and are the subject of this Office Action.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2 and 25 are rejected under 35 U.S.C. 103(a) as being anticipated by Hsu (US Patent 5,958,417).

Hsu teaches that the plain Crategus is useful in blood stasis. An active component in Crataegus is chlorogenic acid (see column 2, lines 55-63). According to the National Cancer Institute, blood stasis is a slowing or pooling of blood (see attached reference). A blood fluidity improving agent (see instant claims 1-2 and 25) is interpreted as an agent which is capable of increasing blood flow in the body. In this instance, an improvement in blood stasis is being

Art Unit: 4173

interpreted as further capable of increasing blood flow. Thus, the reference anticipates Applicant's claims.

With regards to the instantly claimed amounts and/or ranges, Hsu does not explicitly teach the instantly claimed amounts and/or ranges. However, the Examiner points out that generally, differences in concentration will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration is critical. "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In re Aller F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). In this instance, prior art teaches the incorporation of the same components, particularly for use in the same field of endeavor and to treat the same disorders/symptoms, as claimed by Applicant.

Conclusion

No claims allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anna Pagonakis whose telephone number is 571-270-3505. The examiner can normally be reached on Monday thru Thursday, 9am to 5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin H. Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 4173

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AP

Frederick Koss
Primary Examiner
Art Unit 1614
Zill